

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1570

Introduced by Assembly Member Perea
(Principal coauthor: Senator Simitian)

February 1, 2012

An act to amend Sections 21178, 21180, 21181, 21183, 21185, 21187, and 21189.2 of, and to add and repeal Section 21167.6.3 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, as amended, Perea. Environmental quality: California Environmental Quality Act. *Act: record of proceedings.*

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and

certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would specify, until January 1, 2016, the types of projects for which an applicant can request the lead agency to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings, as provided, this bill would impose a state-mandated local program.

(2) This bill would provide that the above provision would not become operative unless SB 984 of the 2011–12 Regular Session of the Legislature is enacted on or before January 1, 2013.

~~(3) The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (act) establishes alternative procedures for creating the administrative record and specified judicial review procedures for the judicial review of the EIR and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The act authorizes the Governor, upon application, to certify a leadership project for streamlining pursuant to the act if certain conditions are met.~~

~~The act requires that the project result in a minimum investment of \$100,000,000 in California upon completion of construction and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.~~

~~This bill would require instead that a project result in a minimum investment of \$100,000,000 spent on planning, design, and construction of the project. The bill, in order to maximize public health, environmental, and employment benefits, would require a lead agency to place the highest priority on feasible measures that will reduce greenhouse gas emissions on the project site and in the neighboring communities of the project site.~~

~~(4) The act requires a party seeking judicial review of the EIR to bring concurrently other claims alleging a public agency has granted land use approvals or a leadership project in violation of relevant laws.~~

~~This bill would repeal this provision.~~

~~(5) The act requires the Judicial Council to report to the Legislature on or before January 1, 2015, on the effects of the act, including specific information on benefits, costs, and detriments.~~

~~The bill would require instead that the Judicial Council report to the Legislature on the effects of the act on the administration of justice. The bill also would make technical and clarifying changes.~~

~~Because a lead agency would be required to perform additional actions, this bill would impose a state-mandated local program.~~

~~(6)–~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21167.6.3 is added to the Public
2 Resources Code, to read:

3 21167.6.3. (a) Section 21167.6.2 applies to the record of
4 proceedings for the preparation of a negative declaration, mitigated
5 negative declaration, environmental impact report, or other
6 environmental document prepared for any of the following:

7 (1) A project determined to be of statewide, regional, or
8 areawide environmental significance pursuant to subdivision (d)
9 of Section 21083.

10 (2) A project subject to Section 21094.5 or Chapter 4.2
11 (commencing with Section 21155) of Division 13.

12 (3) (A) A project, other than one described in paragraphs (1)
13 and (2), for which the lead agency consents to prepare the record
14 of proceeding pursuant to this paragraph.

15 (B) The lead agency shall respond to a request by the project
16 applicant within 10 business days from the date that the request
17 pursuant to subdivision (a) of Section 21167.6.2 is received by the
18 lead agency.

19 (C) A project applicant and the lead agency may mutually agree,
20 in writing, to extend the time period for the lead agency to respond
21 pursuant to subparagraph (B), but they shall not extend that period
22 beyond the commencement of the public review period for the
23 proposed negative declaration, mitigated negative declaration, or
24 draft environmental impact report.

1 (D) The request to prepare a record of proceedings pursuant to
2 this paragraph shall be deemed denied if the lead agency fails to
3 respond within 10 business days of receiving the request or within
4 the time period agreed upon pursuant to subparagraph (C),
5 whichever ends later.

6 (b) The written request of the applicant submitted pursuant to
7 subdivision (a) of Section 21167.6.2 shall include an agreement
8 to pay all of the lead agency's costs of preparing and certifying
9 the record of proceedings pursuant to Section 21167.6.2 and
10 complying with the requirements of this section and Section
11 21167.6.2, in a manner specified by the lead agency.

12 (c) The costs of preparing the record of proceedings pursuant
13 to Section 21167.6.2 and complying with the requirements of this
14 section and Section 21167.6.2 are not recoverable costs pursuant
15 to Section 1033 of the Code of Civil Procedure.

16 (d) This section shall remain in effect only until January 1, 2016,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2016, deletes or extends that date.

19 ~~SEC. 2. Section 21178 of the Public Resources Code is~~
20 ~~amended to read:~~

21 ~~21178. The Legislature finds and declares all of the following:~~

22 ~~(a) The overall unemployment rate in California is 12 percent,~~
23 ~~and in certain regions of the state that rate exceeds 13 percent.~~

24 ~~(b) The California Environmental Quality Act (Division 13~~
25 ~~(commencing with Section 21100)) requires that the environmental~~
26 ~~impacts of development projects be identified and mitigated.~~

27 ~~(c) The act also guarantees the public an opportunity to review~~
28 ~~and comment on the environmental impacts of a project and to~~
29 ~~participate meaningfully in the development of mitigation measures~~
30 ~~for potentially significant environmental impacts.~~

31 ~~(d) There are large public and private projects under~~
32 ~~consideration in various regions of the state that would replace old~~
33 ~~and outmoded facilities with new job-creating facilities to meet~~
34 ~~those regions' needs while also establishing new, cutting-edge~~
35 ~~environmental benefits to those regions.~~

36 ~~(e) These projects are publicly financed, privately financed, or~~
37 ~~financed from revenues generated from the projects themselves~~
38 ~~that do not require taxpayer financing.~~

1 ~~(f) These projects further will generate thousands of full-time~~
2 ~~jobs during construction and thousands of additional permanent~~
3 ~~jobs once they are constructed and operating.~~

4 ~~(g) These projects also present an unprecedented opportunity~~
5 ~~to implement nation-leading innovative measures that will~~
6 ~~significantly reduce traffic, air pollution, and other significant~~
7 ~~environmental impacts, and fully mitigate the greenhouse gas~~
8 ~~emissions resulting from passenger vehicle trips attributed to the~~
9 ~~project.~~

10 ~~(h) These pollution reductions will be the best in the nation~~
11 ~~compared to other comparable projects in the United States.~~

12 ~~(i) The purpose of this act is to provide unique and~~
13 ~~unprecedented streamlining benefits under the California~~
14 ~~Environmental Quality Act for projects that provide the benefits~~
15 ~~described above for a limited period of time to put people to work~~
16 ~~as soon as possible.~~

17 ~~SEC. 3. Section 21180 of the Public Resources Code is~~
18 ~~amended to read:~~

19 ~~21180. For the purposes of this chapter, the following terms~~
20 ~~shall have the following meanings:~~

21 ~~(a) "Applicant" means a public or private entity or its affiliates,~~
22 ~~or a person or entity that undertakes a public works project or~~
23 ~~proposes a project, and its successors, heirs, and assignees.~~

24 ~~(b) (1) "Environmental leadership development project,"~~
25 ~~"leadership project," or "project" means a project as described in~~
26 ~~Section 21065 that is one the following:~~

27 ~~(A) A residential, retail, commercial, sports, cultural,~~
28 ~~entertainment, or recreational use project that is designed to be~~
29 ~~certified as LEED silver or better by the United States Green~~
30 ~~Building Council and that achieves and maintains a 10-percent~~
31 ~~greater standard for transportation efficiency than for comparable~~
32 ~~projects. These projects shall be located on an infill site. For a~~
33 ~~project that is within a metropolitan planning organization for~~
34 ~~which a sustainable communities strategy or alternative planning~~
35 ~~strategy is in effect, the infill project shall be consistent with the~~
36 ~~general use designation, density, building intensity, and applicable~~
37 ~~policies specified for the project area in either a sustainable~~
38 ~~communities strategy or an alternative planning strategy, for which~~
39 ~~the State Air Resources Board, pursuant to subparagraph (H) of~~
40 ~~paragraph (2) of subdivision (b) of Section 65080 of the~~

~~Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.~~

~~(B) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.~~

~~(C) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.~~

~~(2) This subdivision does not affect any requirement for a project to comply with the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations), or any other applicable law or regulation.~~

~~(e) "Transportation efficiency" means the number of private automobile trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.~~

~~SEC. 4. Section 21181 of the Public Resources Code is amended to read:~~

~~21181. This chapter does not apply to a project if the applicant fails to notify a lead agency prior to the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to this chapter. The lead agency shall notify the Secretary of the Natural Resources Agency if the applicant provides notification pursuant to this chapter.~~

~~SEC. 5. Section 21183 of the Public Resources Code is amended to read:~~

~~21183. The Governor shall not certify a leadership project for streamlining pursuant to this chapter unless all the following conditions are met:~~

~~(a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) spent on planning, design, and construction of the project.~~

~~(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment.~~

1 ~~(e) The project does not result in any net additional emission~~
2 ~~of greenhouse gases, including greenhouse gas emissions from~~
3 ~~employee transportation, as determined by the State Air Resources~~
4 ~~Board pursuant to Division 25.5 (commencing with Section 38500)~~
5 ~~of the Health and Safety Code. To maximize public health,~~
6 ~~environmental, and employment benefits, the lead agency shall~~
7 ~~place the highest priority on feasible measures that will reduce~~
8 ~~greenhouse gas emissions on the project site and in the neighboring~~
9 ~~communities of the project site. Offset credits shall be employed~~
10 ~~by the applicant only after feasible local emission reduction~~
11 ~~measures have been implemented. The applicant shall, to the extent~~
12 ~~feasible, place the highest priority on the purchase of offset credits~~
13 ~~that produce emission reductions within the boundaries of an~~
14 ~~applicable air pollution control district or air quality management~~
15 ~~district.~~

16 ~~(d) The project applicant has entered into a binding and~~
17 ~~enforceable agreement that all mitigation measures required~~
18 ~~pursuant to this division to certify the project under this chapter~~
19 ~~shall be conditions of approval of the project, and those conditions~~
20 ~~will be fully enforceable by the lead agency or another agency~~
21 ~~designated by the lead agency. In the case of environmental~~
22 ~~mitigation measures, the applicant agrees, as an ongoing obligation,~~
23 ~~that those measures will be monitored and enforced by the lead~~
24 ~~agency for the life of the obligation.~~

25 ~~(e) The project applicant agrees to pay the costs of the Court of~~
26 ~~Appeal in hearing and deciding any case, including payment of~~
27 ~~the costs for a special master if deemed appropriate by the court,~~
28 ~~in a form and manner specified by the Judicial Council, as provided~~
29 ~~in the Rules of Court adopted by the Judicial Council pursuant to~~
30 ~~subdivision (b) of Section 21185.~~

31 ~~(f) The project applicant agrees to pay the costs of preparing~~
32 ~~the administrative record for the project concurrent with review~~
33 ~~and consideration of the project pursuant to this division, in a form~~
34 ~~and manner specified by the lead agency for the project.~~

35 ~~SEC. 6. Section 21185 of the Public Resources Code is~~
36 ~~amended to read:~~

37 ~~21185. (a) Notwithstanding any other law, any action or~~
38 ~~proceeding alleging that a lead agency has approved or is~~
39 ~~undertaking a leadership project certified by the Governor in~~

1 violation of this division shall be conducted in accordance with
2 the following streamlining benefits:

3 (1) The action or proceeding shall be filed in the Court of Appeal
4 with geographic jurisdiction over the project.

5 (2) The Court of Appeal shall issue its decision on all petitions
6 for writ of mandate filed pursuant to this subdivision within 175
7 days of the filing of the last petition.

8 (3) The court may appoint a master to assist the court in
9 managing and processing the case.

10 (4) The court may order extensions of time only for good cause
11 and in order to promote the interests of justice.

12 (b) On or before July 1, 2012, the Judicial Council shall adopt
13 Rules of Court to implement this chapter.

14 SEC. 7. Section 21187 of the Public Resources Code is
15 amended to read:

16 21187. The draft and final environmental impact report shall
17 include a notice in no less than 12-point type stating the following:

18
19 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING
20 WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE,
21 WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY
22 JUDICIAL ACTION CHALLENGING THE CERTIFICATION
23 OF THE EIR OR THE APPROVAL OF THE PROJECT
24 DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES
25 SET FORTH IN CHAPTER 6.5 AND MUST BE FILED WITH
26 THE COURT OF APPEAL. A COPY OF CHAPTER 6.5 IS
27 INCLUDED IN THE APPENDIX TO THIS EIR.”

28
29 SEC. 8. Section 21189.2 of the Public Resources Code is
30 amended to read:

31 21189.2. The Judicial Council shall report to the Legislature
32 on or before January 1, 2015, on the effects of this chapter on the
33 administration of justice.

34 SEC. 9.

35 SEC. 2. Section 1 of this *This* act shall not become operative
36 unless Senate Bill 984 of the 2011–12 Regular Session of the
37 Legislature is enacted on or before January 1, 2013.

38 SEC. 10.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 a local agency or school district has the authority to levy service
2 charges, fees, or assessments sufficient to pay for the program or
3 level of service mandated by this act, within the meaning of Section
4 17556 of the Government Code.

O